

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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In re: JANICE JEAN HEIKES,

Debtor.

BKY. No.: 04-44931  
Chapter 7

**NOTICE OF HEARING AND  
MOTION FOR RELIEF  
FROM AUTOMATIC STAY**

-----  
TO: JANICE JEAN HEIKES AND HER ATTORNEY, THOMAS A. JONES,  
FERRO & JONES, P.O. BOX 1051, WILLMAR, MN 56201-1051.

1. Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on November 4, 2004 at 2:00 P.M. in Courtroom No. 8 West, at the United States Courthouse, at 300 South Fourth Street, in Minneapolis, Minnesota, or as soon as counsel may be heard before The Honorable Robert J. Kressel, United States Bankruptcy Court Judge.

3. Any response to this motion must be filed and delivered not later than November 1, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than October 26, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

**MOTION TO LIFT AUTOMATIC STAY**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157

and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on September 3, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtor that is subject to a perfected security interest in favor of the Movant as shown by the terms of the mortgage, a copy of which is attached hereto as Exhibit A.

6. That pursuant to the provisions of 11 U.S.C. §362(d)(1)(a), the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That the payments due under said mortgage are in default from September 1, 2004 to date in the amount of \$596.24 per month, plus accrued late charges and inspection fees.

b) That as of the date of filing herein, the amount due under said mortgage loan was approximately \$62,000.00. According to the Debtor the fair market value of the property is estimated at \$71,000.00.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, moves the Court for an Order

pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to pursue its rights under its mortgage and applicable state law, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: October 13, 2004

By:       /e/Thomas J. Reiter        
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Academy Professional Building  
25 North Dale Street, 2<sup>nd</sup> Floor  
St. Paul, MN 55102-2227  
(651) 209-9760  
Attorney Reg. 152262/231605  
(D2041)

**THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.**

## VERIFICATION

I, Karan Abernethy, Bankruptcy Supervisor with Wells Fargo Bank, N. A., declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: October 13, 2004.

WELLS FARGO BANK, N.A.

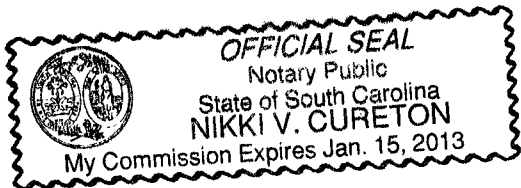
By: Karan Abernethy  
Karan Abernethy

Its: Bankruptcy Supervisor

Subscribed to and sworn before me this

13<sup>th</sup> day of October, 2004.

Nikki V. Cureton  
Notary Public



Registration fee hereon of \$ 154.79  
has been paid in receipt No. 33761

Jim Modderman Co., Treasurer  
Countersigned Jim Modderman  
Sam Modderman Co. Auditor  
Blatney Pedersen Deputy

OFFICE OF COUNTY RECORDER  
KANDIYOH, COUNTY MINNESOTA  
CERTIFIED TO BE FILED  
AND/OR RECORDED ON

448  
BLK 136  
2nd ADDN  
Willmar

APR 22 1996

TIME 1:35 AM / PM  
JULIE GRAVLEY  
COUNTY RECORDER  
BY Julie Gravley DEPUTY

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## MORTGAGE

**NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT.**

THIS MORTGAGE ("Security Instrument") is given on **MARCH 21, 1996**  
**MARVIN A. WOLD AND JANICE J. WOLD, HUSBAND AND WIFE**

The mortgagor is

("Borrower"). This Security Instrument is given to  
**NORWEST MORTGAGE, INC.**

which is organized and existing under the laws of **THE STATE OF CALIFORNIA**  
address is **NORWEST MORTGAGE INC.,, P.O. BOX 5137, DES MOINES, IA 503065137**

and whose

("Lender"). Borrower owes Lender the principal sum of

**SIXTY SEVEN THOUSAND THREE HUNDRED AND 00/100**

Dollars (U.S. \$\*\*\*\*\*67,300.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on **APRIL 01, 2026** and for interest at the yearly rate of **7.000** percent. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in **KANDIYOH, County, Minnesota:**

**LOT 8 OF BLOCK 136 OF SECOND ADDITION TO WILLMAR, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE OF RECORD IN THE OFFICE OF THE COUNTY RECORDER IN AND FOR KANDIYOH COUNTY, MINNESOTA.**

**THIS IS A PURCHASE MONEY SECURITY INSTRUMENT.**

which has the address of **410 NW 11TH STREET, WILLMAR**  
**Minnesota 56201** ("Property Address");

[Street, City]

[Zip Code]

MINNESOTA Single Family-FNMA/FHLMC UNIFORM INSTRUMENT

EV(MN) 04031

Form 3024 8/90

Amended 5/91

VMP MORTGAGE FORMS 18001621-7291

Page 1 of 1

Initials MW

**MICROFILM 410734**



*[Handwritten signature]*

If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon any person in possession of the Property. Lender shall publish a notice of sale, and the Property shall be sold at public auction in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

22. Release: Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

23. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

24. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check applicable box(es)]

- ☐ Adjustable Rate Rider  
☐ Graduated Payment Rider  
☐ Balloon Rider  
☒ V.A. Rider

- ☐ Condominium Rider  
☐ Planned Unit Development Rider  
☐ Rate Improvement Rider  
☐ Other(s) [specify]

- ☐ 1-4 Family Rider  
☐ Biweekly Payment Rider  
☐ Second Home Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

MARVIN A. WOLD (Seal)  
MARVIN A. WOLD -Borrower

JANICE J. WOLD (Seal)  
JANICE J. WOLD -Borrower

(Seal)  
-Borrower

(Seal)  
-Borrower

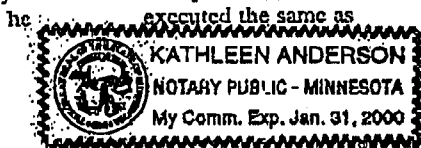
STATE OF MINNESOTA, KANDIYOHI

County ss:

On this 21ST day of MARCH, 1996, before me appeared  
MARVIN A. WOLD AND JANICE J. WOLD, HUSBAND AND WIFE

, to me

personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that



Kathleen Anderson  
Notary Public  
My Commission Expires:

This instrument was prepared by NORWEST MORTGAGE, INC.,  
BLOOMINGTON, Minnesota.

MICROFILM 410734

. of

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

-----  
In re: JANICE JEAN HEIKES,

Debtor.

BKY. No.: 04-44931  
Chapter 7

**AFFIDAVIT OF MOVANT'S  
BANKRUPTCY SUPERVISOR**

-----  
STATE OF SOUTH CAROLINA )

COUNTY OF YORK)

Karan Abernethy, being duly sworn on oath states:

1. That I am a Bankruptcy Supervisor in the Bankruptcy Department for Wells Fargo Bank, N.A. in the Fort Mill, South Carolina servicing center. In my capacity as a Bankruptcy Supervisor, I have had the opportunity to review the mortgage account of the Debtor.

2. That the payments due under said mortgage are in default from September 1, 2004 to date in the amount of \$596.24 per month, plus accrued late charges and inspection fees.

3. That as of the date of filing herein, the amount due under said mortgage loan was approximately \$62,000.00. According to the Debtor the fair market value of the property is estimated at \$71,000.00.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

WELLS FARGO BANK, N.A.

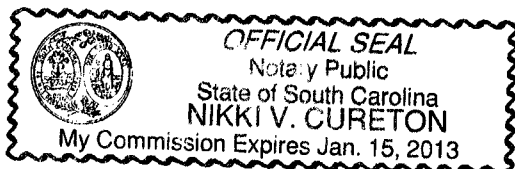
Dated: October 13, 2004

By: Karan Abernethy  
Karan Abernethy  
Bankruptcy Supervisor  
3476 Stateview Blvd.  
Fort Mill, SC 29715

Subscribed to and sworn before me this

13<sup>th</sup> day of October, 2004.

Nikki V. Cureton  
Notary





UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

-----  
In re: JANICE JEAN HEIKES,

Debtor.

BKY. No.: 04-44931  
Chapter 7

**MEMORANDUM IN SUPPORT  
OF MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY**

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**MEMORANDUM OF LAW**

I. Factual Background

The Debtor filed her petition on September 3, 2004 under Chapter 7 of the Federal Bankruptcy Code and listed real property located in Kandiyohi County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lot 8 of Block 136 of Section Addition to Willmar.

The amount due under the Movant's mortgage as of the date of filing herein is approximately \$62,000.00. According to the Debtor the fair market value of the property is estimated at \$71,000.00. The payments due under said mortgage are in default from September 1, 2004 to date in the amount of \$596.24 per month, plus accrued late charges and inspection fees.

II. Argument

GOOD CAUSE EXISTS TO GRANT THE MOVANT  
RELIEF FROM THE STAY FOR CAUSE.

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtor has not offered any form of adequate protection to the Movant as the loan debt increases. The amount due under Movnat's loan totals approximately \$62,000.00 and the fair market value of the property is estimated at \$71,000.00. Any purported equity in said real property would be consumed by per diem interest and marketing costs.

In view of the Debtor's inability to make payments toward her loan obligation, the Movant's interest in the real property of the Debtor is not adequately protected. A continuing default by the Debtor will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtor is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtor. The Debtor's offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

### **CONCLUSION**

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: October 13, 2004

By: /e/ Thomas J. Reiter

Thomas J. Reiter

Rebecca F. Schiller

Attorneys for Movant

The Academy Professional Building

25 North Dale Street, 2<sup>nd</sup> Floor

St. Paul, MN 55102-2227

(651) 209-9760

152262/231605

(D2041)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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In re: JANICE JEAN HEIKES,

BKY. No.: 04-44931

Chapter 7

Debtor.

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The Academy Professional Building, 25 North Dale Street, 2<sup>nd</sup> Floor, St. Paul, MN 55102-2227 declares that on October 14, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Terri. A. Georgen-Running  
Trustee  
P.O. Box 16355  
St. Paul, MN 55116

United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Janice Jean Heikes  
410 11<sup>th</sup> St. NW  
Willmar, MN 56201

Thomas A. Jones  
Ferro & Jones  
P.O. Box 1051  
Willmar, MN 56201-1051

Marvin A. Wold  
410 11<sup>th</sup> St. NW  
Willmar, MN 56201

And I declare, under penalty of perjury, that the foregoing is true and correct.

REITER & SCHILLER

Dated: October 14, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

The Academy Professional Building

25 North Dale Street, 2<sup>nd</sup> Floor

St. Paul, MN 55102-2227

(651) 209-9760

Attorney Reg. 152262

(D2041)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

-----  
In re: JANICE JEAN HEIKES,

BKY. No.: 04-44931

Chapter 7

Debtor.

**ORDER TERMINATING STAY**

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This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on November 4, 2004 in Courtroom 8 West, at the United States Courthouse, at 300 South Fourth Street, in Minneapolis, Minnesota. The movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Lot 8 of Block 136 of Second Addition to Willmar,  
Kandiyohi County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Robert J. Kressel  
Judge of the U.S. Bankruptcy Court